

MINUTES
MICHIGAN STATE TRANSPORTATION COMMISSION MEETING
October 24, 2002
Troy, Michigan

Meeting noticed in accordance with Open Meetings Act, Public Act 267 of 1976.

Present: Barton LaBelle, Chairman
 Ted Wahby, Vice Chairman
 Betty Jean Awrey, Commissioner
 Lowell Jackson, Commissioner
 John Garside, Commissioner
 C. Robert Baillod, Commissioner

 Charles Krupka, Commission Advisor
 Jerry Jones, Commission Auditor
 Vickie Plummer, Executive Secretary
 Patrick Isom, Assistant Attorney General
 Gregory Rosine, Director
 Barbara Hayes, Chief Administrative Officer
 Larry Tibbits, Chief Operations Officer
 Philip Kazmierski, Bureau of Urban and Public Transportation
 William Gehman, Bureau of Aeronautics
 Wayne Niles, Bureau of Finance and Administration
 Gary D. Taylor, Bureau of Highway Technical Services
 Louis Lambert, Bureau of Transportation Planning
 Tom Maki, Office of Strategic Planning & Initiatives

A list of those people who attended the meeting is attached to the official minutes.

Chairman LaBelle called the meeting to order at 9:10 a.m. in the Embassy Suites Conference Room in Troy, Michigan.

MINUTES

Commission Minutes

It was moved by Vice Chairman Wahby, with support from Commissioner Awrey, to approve the minutes of September 26, 2002, as submitted. The motion carried on a unanimous voice vote.

PRESENTATIONS

Genesee Metropolitan Planning Organization

Chapin Cook, Director of Genesee Metropolitan Planning Organization, provided information on the implementation of an intermodal study of the I-69/I-75 corridor. The Counties of Genesee, Shiawassee, Saginaw, Lapeer, and St. Clair, along with public and private entities have participated in this study. Implementation of the next phase of the study includes resolving railroad conflicts, improving access to the hub at Bishop Airport, making Blue Water Bridge improvements, improving the Saginaw River, and developing a preliminary design for a corridor. Other issues that need to be resolved on the I-75 corridor study near I-475 are that traffic continues to increase providing a need for improved traffic movement, and multiple lanes of traffic from the south and the merging of I-69 create a choke point. In addition, existing bridge conditions have exceeded their design life and need major reconstruction. Proposed improvements include adding a fourth traffic lane, upgrading interchanges, adding a collector distributor road and intelligent transportation systems at an estimated cost of \$650 million. The next step is to develop an environmental statement.

Macomb County Road Commission

Ed Tatem, County Highway Engineer for Macomb County Road Commission, provided information on their road and bridge program for Fiscal Year 2003. He provided information on lane widening projects throughout the county, installation of guardrail, construction of a roundabout, installation of radio controllers on traffic signals, and a countywide concrete and bituminous patch program. The total cost of the program is \$46,845,000. Mr. Tatem also provided the locations of bridge projects throughout the county noting aesthetic and safety issues. The cost of the bridge program is \$5,410,000.

Transportation Asset Management Council Update

Charles Krupka, Commission Advisor and Executive Secretary to the Transportation Asset Management Council, provided an update on the Council meetings held on October 8 and October 22, 2002. Carmine Palombo has been elected Chair of the Council, and a budget was provided to the Commission for the years 2003 and 2004. Charlie will provide the minutes of each Council meeting to the Commissioners.

After the budget was reviewed, it was moved by Commissioner Jackson, with support from Commissioner Garside, to approve the Council's budget as submitted.

Public Comments

Representative Robert Gosselin commented on traffic issues at the I-75 interchange in Troy. He referred to Oakland County as a “donor county” and expressed the need for more monies to go back to Oakland County for improvements to roadways throughout the county. The Representative also expressed concern that contracts are ready to be let to reconstruct the Eight Mile Road Bridge over Woodward, where Ferndale joins Detroit, and that he would like to see the intersection reconstructed at ground level instead of the bridge being reconstructed. Director Rosine explained that the Department has been working with the City of Ferndale on this project, and noted that the bridge at Woodward is a major arterial that moves traffic very effectively through the area. The Director also noted that making an at-grade intersection at Woodward and Eight Mile Road would significantly impact the roadway affecting its capacity to handle traffic and creating congestion at that location. The Department is considering aesthetic options for this location to help alleviate local concerns for the area where the bridge will be reconstructed.

COMMISSION BUSINESS

OVERSIGHT

Commission/State Administrative Board Contracts and Agreements (Exhibit A)

Charlie Krupka, Commission Advisor, reported Item 23 of Exhibit A was withdrawn.

It was moved by Vice Chairman Wahby, with support from Commissioner Jackson, to grant approval to the Department to proceed with the contract process. The motion carried on a unanimous voice vote.

Bid Letting Pre-Approvals (Exhibit A-1)

It was moved by Commissioner Jackson, with support from Commissioner Garside, to grant approval to the Department to proceed with the contract process. The motion carried on a unanimous voice vote.

Letting Exceptions (Exhibit A-2)

It was moved by Vice Chairman Wahby, with support from Commissioner Awrey, to grant approval to the Department to proceed with the contract process. The motion carried on a unanimous voice vote.

Information Items (Exhibit A-3)

This item was for information only and did not require a vote.

Contract Adjustments (Exhibit B)

It was moved by Vice Chairman Wahby, with support from Commissioner Baillod, to approve the contract adjustments as submitted. The motion carried on a unanimous voice vote.

Recess

Chairman LaBelle recessed the meeting at 10:20 a.m. and reconvened the meeting at 10:45 a.m.

PRESENTATIONS

Oakland County Road Commission

Brent Bair, Oakland County Road Commission, provided information on the trunklines within Oakland County that need improvements to handle capacity issues. Widening of I-75 remains the first priority, with no monies earmarked for construction. He expressed a need to continue to provide improved road systems for area businesses. M-15 continues to be congested with high accident rates, and M-24 has stop-and-go traffic throughout the day. Safety continues to be the number one priority for the county.

Director's Report

Director Rosine reported that Susan Mortel will be replacing Lou Lambert as Deputy Director of the Bureau of Transportation Planning. The American Association of State Highway and Transportation Officials (AASHTO) met in Alaska last week for their annual meeting where discussions were held on TEA21, the Federal Highway Administration cited Michigan for their passage of an asset management council, and Michigan received six national awards.

Recognition

Chairman LaBelle expressed best wishes to Deputy Directors Tom Maki, Wayne Niles, Gary Taylor, Phil Kazmierski, Bill Gehman, Barb Hayes, and Lou Lambert in their retirements. Director Rosine presented State of Michigan flags and certificates of recognition to each individual.

Pavement Performance Warranties

Director Rosine provided an update on the development of enhanced warranties and distributed a Pavement Performance Warranty Key Concepts document. He pointed out that the first sentence of the second paragraph of the document reads "The warranty will cover performance deficiencies caused by factors over which the contractor is given the opportunity to exercise control." In the same paragraph is a sentence, which is an issue of difference between the Department and the contracting industry, that reads "The contractor may be given the opportunity to exercise control over elements of the entire pavement structure." The Director explained that the base structure supports the pavement on top of the roadway. The contractual relationship is with the prime contractor who is selected by the bidding process; at times the prime contractor may be a pavement person, and sometimes the prime contractor may be the person that builds the base. The Department has no control over the subcontractors selected for the job. The Director noted three projects have been identified where the contractor will have control over traffic control, where weigh-in-motion devices can be placed to count commercial vehicles, and control of the design mix of the pavement. A conflict resolution process is in place in case of pavement failure, and there is a liability cap of 80 percent with a sliding scale down to 25 percent of the pavement structure costs. The pilot projects identified for seven-year enhanced warranties in 2003 are M-84 in the Bay Region, M-6 in Grand Rapids, and US-12 in the Metro Region. Specifications are being developed on these projects and will be provided to the industry for comment. The Department will continue to work with the construction industry on performance warranty issues.

Commissioner Jackson questioned why the bond amount is 25 percent and liability is 80 percent. The Director responded that the bond is in place for when a contractor is no longer in existence, but does not believe this is an issue for contractors in Michigan. He furthered that the level of risk for total failure of a pavement is within the first couple years, and after that the risk drops substantially for total failure. The prime contractor has the responsibility to make sure subcontractors perform quality work.

Commissioner Baillod questioned the language "opportunity to exercise control." Patrick Isom, Assistant Attorney General, offered, as an example, that a contractor could be given an "opportunity" to select from a predetermined list of materials, which could be made to work and are acceptable to the Department, for a project. The contractor would be responsible for choosing a material within the range. In that way they are given the "opportunity" to exercise control over which material is selected to produce a pavement that does not have deficiencies. If the pavement does have deficiencies and if, for example, the contractor selected a material at the bottom end of the range, the contractor could no longer use the excuse that the material was on the Department's approved list if, by choosing a material higher in the range, the problem could have been avoided. The Department, essentially, wants to buy the contractors expertise on the selection of materials, within some parameters, and expects to pay for the expertise.

Mike Nystrom, representing the Association of Underground Contractors (AUC) and the Michigan Pavement Association (MPA), expressed that the industry is unified in their position that they will stand behind their work, and their position has not wavered throughout the entire performance warranty debate. Mr. Nystrom reiterated that the AUC, MPA, Michigan Concrete Pavers, Michigan Road Builders Association, and the Michigan Asphalt Paving Association are unified in their opposition to the key concepts document as written. The key issue is that the document still holds contractors liable for things that are outside their control, mainly designs that someone else put together. Their legal analysis shows there are statutes and legal opinions that prohibit contractors from being required to take on the risk as provided in the document. The core issue has not changed during the eight meetings held, and appears to be worse in the latest version of the document. Mr. Nystrom questioned why change direction if the industry is already willing to stand behind their work and commented that the substructure was not included in the beginning discussions of pavement performance warranties. The industry has no control over the design of the substructure and currently, once the substructure is in place, the Department reviews and accepts the substructure. Mr. Nystrom also provided that the Department does have control over who bids a project with their prequalification system. Minor issues have been resolved, but no group supports the direction of the Department on the document provided today.

Rayburn King, Michigan Asphalt Paving Association (MAPA), commented that MAPA still supports performance warranties and three pilot projects to be learning experiences. MAPA objects to the warranties including other contractors because they have no materials and workmanship warranties. MAPA continues to support the theory of performance warranties, but they are in disagreement with the position the Department has taken by including substructure.

Commissioner Jackson asked Mr. Nystrom to comment on the statement in the document which reads "c) The subgrade, except to the extent that the Contractor damages or impairs the subgrade by the manner that the contract work is performed." Mr. Nystrom commented that if there is a problem in the future with the pavement, the natural review would go down into the substructure which, in his opinion, includes the entire structure into the warranty. The industry considers the subgrade as the natural earth, and the base is designed by the Department or by a consultant. Director Rosine responded that the contractors would not be asked to stand behind a problem with the base due to an improper design, but if there is a pavement failure attributable to the base because there is a base failure, and it is clearly because the contractor had control over the workmanship that goes into the base, the contractor would be held responsible. Mr. Nystrom responded that a forensic investigation may be impossible after traffic has been driving over a road, and noted that as a reason for the industry to have the Department look at the bases for approval as they are constructed. Director Rosine commented that the Department is not always at the site on a daily basis as

the subbase is constructed, the contractor should be held responsible for the work as the contractor is at the site every day.

Rayburn King commented that the three pilot projects noted should be low risk as M-6 is a complete new job with new subbase and new subgrade, and the other two projects are complete reconstruction. MAPA's position is to move forward and learn about performance warranties on pavement because the two industries are already participating with materials and workmanship, and the asphalt industry is ready to move forward. The problem is that grading and drainage contractors are now being included in the process and this is causing problems with the agreement. MAPA suggests that a subgrade acceptance document be used as a tool in lieu of putting a performance warranty on the projects, and that the three pilot projects be used as a learning process.

Commissioner Baillod noted that the contractors seem uncomfortable with subgrade issues, and Mr. Nystrom provided some examples of how problems may develop. Director Rosine noted that a conflict resolution team will be appointed and will include members of both the industry and the Department. Commissioner Jackson pointed out that this meeting was not the forum to negotiate on this issue.

Chairman LaBelle commented that the Commission has been supportive of warranties and has urged the industry and the Department to meet on this issue. The Chairman also expressed concern that in the rush to downsize, in some areas the Department may be abdicating responsibility as an owner. It is necessary to put something in place, but the Department should move slowly in this area so as not to lose control of the process. The process cannot succeed if there is no compromise between the Department and the industry. Further discussions need to be held prior to putting the three projects into place to get agreement from the industry. Vice Chairman Wahby noted agreement with the Chairman on this issue.

Gary Naeyaert, Michigan Road Builders Association (MRBA), commented the pavement structure warranty is a monumental shift in direction and MRBA cannot accept this. He noted that the press releases the Department has distributed do not fundamentally agree with the key concepts document, and that this document has not been made available for public review. Mr. Naeyaert requested the Commission direct the Department to not include the enhanced warranty on the M-6 project scheduled to be let in December in order to better focus on the issues of control, shared responsibility, driving surface and pavement structure.

Chairman LaBelle noted that the Commission is not prepared to direct the Department to do anything today, but further discussions will be held with the Director.

ADJOURNMENT

Chairman LaBelle adjourned the meeting at 12:10 p.m.

Commission Advisor